

## Mentoring the Lawyer, Past and Present: Some Reflections

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Mentorship is a central component of a lawyer's education: it involves a reciprocal relationship between a senior and junior lawyer, fostered in the workplace or broader professional community. Today, the Canadian legal profession is devoting significant energy to creating formal mentoring programs beyond articling. Yet concern about mentoring exists in the profession despite additional program creation. This article posits that the history of lawyer mentoring helps explain current mentoring challenges. Historical impressions of mentorship in the province of Ontario suggest the endeavour succeeded when lawyers created relational rapport and fostered welcoming workplaces and professional communities. Mentoring suffered, meanwhile, when lawyers neglected relationships and fostered inhospitable workplace and community norms. Analysis of mentoring today suggests a historical continuity to lawyer mentoring challenges. Specifically, and despite increased mentoring program creation, lawyers still grapple—as they did historically—to establish mentoring bonds and foster supportive workplace-community norms. Understanding this continuity may help the profession better fulfil its responsibilities to the next generation of lawyers.

Le mentorat est une composante essentielle de la formation d'un avocat en ce qu'il implique une relation de réciprocité entre un avocat expérimenté et un avocat débutant qui se développe dans le milieu de travail ou dans la communauté professionnelle élargie. De nos jours, la profession juridique canadienne déploie des efforts considérables envers la création de programmes de mentorat établis qui vont au-delà du stage en droit traditionnel. Des craintes sont cependant exprimées au sujet du mentorat dans la profession et ce, malgré la création de programmes supplémentaires. Dans cet article, l'auteur postule que l'histoire du mentorat entre avocats permet d'expliquer les défis qui se posent à l'heure actuelle pour le mentorat. Les traces historiques de mentorat que l'on note dans la province de l'Ontario laissent penser que le mentorat était florissant lorsque des avocats nouaient une véritable relation et rendaient le milieu de travail et les communautés professionnelles plus accueillants. En revanche, le mentorat en subissait les conséquences négatives dès que les avocats négligeaient ces relations et s'ingéniaient à rendre inhospitaliers le milieu de travail et les normes en vigueur dans la communauté professionnelle. Une analyse du mentorat tel qu'il se pratique de nos jours montre une continuité historique dans les défis qui se posent au mentorat entre avocats. En particulier, et malgré le nombre croissant de programmes de mentorat, les avocats doivent encore se battre, comme ils et elles l'ont toujours fait, pour établir des relations de mentorat et instaurer un milieu de travail et des normes favorables à la bonne marche d'un mentorat. La profession, en prenant conscience de la dynamique de cette continuité, pourra ainsi mieux assumer ses responsabilités pour la prochaine génération de juristes.

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# Mentoring the Lawyer, Past and Present: Some Reflections

VERONICA H. ASHENHURST

## I. INTRODUCTION

Invite a lawyer to reminisce about his or her mentors and the lawyer will often gladly hold forth. Understandably so, for the mentoring experience is a formative part of a new lawyer's education. By "mentoring," I mean a reciprocal relationship between a senior lawyer (the mentor) and a junior lawyer (the protégé), fostered to advance the protégé's professional development, but also benefiting the mentor and the legal profession more broadly.<sup>1</sup> Today, the Canadian legal profession relies on the articling relationship between student and principal as a main vehicle for mentorship. But Canadian law firms, law societies and law associations are also now creating additional formal mentoring programs to help novice lawyers transition to practice after call to the Bar, and provide continuity to their professional growth after the more structured learning environment of articles. Similar mentoring program efforts are gaining momentum in the United States, where one commentator speaks of a "renaissance" or "revival" in lawyer mentoring.<sup>2</sup>

Despite the growth of formal mentoring programs, palpable unease exists among some members of the profession that lawyers are not being effectively mentored. At the same time, little scholarly work has been done in Canada to understand the history of lawyer mentoring. Inadequate knowledge about the history of mentorship

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1 See Adelle Blackett, "Mentoring the Other: Cultural Pluralist Approaches to Access to Justice" (2001) 8:3 *International Journal of the Legal Profession* 275 at 277; Belle Rose Ragins, "Diversified Mentoring Relationships in Organizations: A Power Perspective" (1997) 22:2 *Academy of Management Review* 482 at 483, 493-94.

2 Julie A Oseid, "When Big Brother is Watching [Out For] You: Mentoring Lawyers, Choosing a Mentor, and Sharing Ten Virtues from My Mentor" (2008) 59 *SCL Rev* 393 at 395, 402; Doug Ashworth et al, "Using Multiple Mentors in Bar and Law Firm Mentoring Programs: Executive Summary" (2009), online: University of South Carolina School of Law, Nelson Mullins Riley & Scarborough Center on Professionalism, online: <<http://professionalism.law.sc.edu>> at 2, n 4 (although the American Bar is creating several formal mentoring programs for law students and junior lawyers, most American states—unlike Canadian provinces—do not currently require students to complete an articling term before call to the Bar. Some states, however, have established articling-type requirements (Georgia, Ohio). Other states will begin such programs soon (South Carolina, Utah) or are actively considering programs (Maryland, Illinois)).

deprives the profession from meaningfully building on the successes of the past and from understanding continuity and change in lawyer mentoring challenges across the decades.

This article, a reflective piece rather than a systematic study, is modest in its aims. Part I anchors the reader in the subject of mentorship. Drawing on Adelle Blackett's work, it emphasizes that mentoring straddles the public-private divide: it is a relationship between two people, but happens in the public, workplace sphere. Part II begins preliminary study into the history of lawyer mentoring in the province of Ontario, with a focus on the nineteenth century and the first two-thirds of the twentieth. The historical impressions suggest a variegated mentoring history, where mentoring success depended upon lawyers' capacity to forge meaningful ties with newcomers, and foster hospitable workplaces and professional communities. Part III offers a tentative answer to explain why an increase in lawyer mentoring initiatives in Canada today coexists with concern about lawyer mentoring among some members of the profession. I posit that the uneven history of lawyer mentoring helps explain today's mentoring challenges. Crucially, and despite program creation, lawyers continue to grapple—as they did historically—with the relational and workplace-community facets of mentoring. Program creation alone may thus be insufficient to support quality mentorship. I conclude by offering avenues for further thought and research on this important subject.

## II. TOWARD A FRAMEWORK TO UNDERSTAND MENTORSHIP

Each lawyer is responsible for his or her own professional development. Yet, new lawyers cannot fully develop unless others assist them along the way, suggesting the profession also has a responsibility to mentor newcomers. Scholarly research on mentoring, meanwhile, improves our grasp of the subject and thus helps the profession meet its mentoring responsibility.

Until about ten years ago, however, little Canadian scholarship had probed lawyer mentoring beyond A. J. Hobbins' careful work chronicling one mentoring relationship between two legal scholars at McGill University.<sup>3</sup> Canadian scholars have entered the new millennium with more zeal for the subject. Erika Abner has analyzed the mentoring experiences of a small cohort of Toronto lawyers and advocates the value of a culture of learning in law firms.<sup>4</sup> Using survey data from Ontario lawyers and law students, Fiona M. Kay has collaborated with various co-authors to affirm mentorship's favourable career impact on both new and established lawyers,<sup>5</sup> and to explain the special value of "multiple mentors" on a lawyer's career.<sup>6</sup> Finally, Adelle

3 A.J. Hobbins, "Mentor and Protégé: Percy Ellwood Corbett's Relationship with John Peters Humphrey" (1999) 37 *CanYB Int'l Law* 3.

4 Erika Abner, "Situating Learning and the Role of Relationships: A Study of Mentoring in Law Firms" (2008) 2 *Canadian Legal Education Annual Review* 95 [Abner, "Situating Learning"].

5 Fiona M. Kay, John Hagan & Patricia Parker, "Principals in Practice: The Importance of Mentorship in the Early Stages of Career Development" (2009) 31:1 *Law & Pol'y* 69.

6 Fiona M. Kay & Jean E. Wallace, "Is More Truly Merrier?: Mentoring and the Practice of Law" (2010) 47:1 *Canadian Review of Sociology* 1 at 1-2.

Blackett has published important work on mentoring across difference in the legal profession, although her focus is not specifically Canadian.<sup>7</sup>

No single definition of lawyer mentoring frames the scholarly work to date. I draw from recent work on lawyer mentoring and the broader mentoring scholarship to offer this definition: mentoring is a reciprocal personal relationship forged in the workplace or broader professional community between a more experienced, more powerful, and usually older lawyer (the mentor), and a less experienced, less powerful and usually younger lawyer (the protégé).<sup>8</sup> The primary purpose of this relationship is to foster the protégé's professional development, not only by helping the protégé "work toward ... professional goals,"<sup>9</sup> but also by guiding him or her to "internaliz[e] the principles of professionalism."<sup>10</sup>

The absence of a "comprehensive, integrated theoretical framework to guide mentoring research"<sup>11</sup> compounds the challenge of scholarly reflection in this still emerging field. Canadian work on lawyer mentoring has drawn on theories about learning as a social process,<sup>12</sup> and also on theoretical frameworks emphasizing the social networking benefits of mentorship.<sup>13</sup> Such theories are helpful, but they do not, alone, adequately highlight the uniqueness of the mentorship experience. Blackett's work begins to probe this uniqueness by positing that mentoring is a "hybrid" creature along "the public-private continuum."<sup>14</sup> Mentoring is a personal relationship between two people, but "forged largely through interactions within the public, workplace contexts."<sup>15</sup> Understanding the dual character of mentorship advances the definition of mentoring and helps build a framework to guide research. It frames the benefits of mentorship and the factors likely to influence it for good or ill.

At the heart of the relational, quasi-private, facet of mentorship is interpersonal rapport between mentor and protégé. Without some bond between mentor and protégé, the activity cannot fairly be termed mentoring. So, when a new lawyer admires and emulates the practice and professionalism of a more senior lawyer from afar, the senior lawyer is, intentionally or not, role-modelling, but he or she is not

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7 Blackett, *supra* note 1. Several Canadian professional lawyers' associations have also published mentoring handbooks: see "An Advocate's Guide to Good Mentoring" (1997–2005), online: The Advocates' Society <<http://www.advocates.ca>> ["Good Mentoring"]; The Lawyers' Professional Indemnity Company, *Managing a Mentoring Relationship* (Toronto: LawPRO, 2002), online: <[www.practicepro.ca](http://www.practicepro.ca)> [*Managing a Mentoring Relationship*]; Bar of Montreal, "Guide for Mentors" (2006), online: <<http://www.barreaudemontreal.qc.ca>> ["Guide for Mentors"].

8 See Blackett, *supra* note 1 at 277; W Brad Johnson, "The Intentional Mentor: Strategies and Guidelines for the Practice of Mentoring" (2002) 33:1 Professional Psychology: Research and Practice 88 at 88, 92; Ragins, *supra* note 1.

9 Ida O Abbott, *The Lawyer's Guide to Mentoring* (Washington, DC: National Association for Law Placement, 2000) at 17.

10 Neil Hamilton & Lisa Montpetit Brabbit, "Fostering Professionalism through Mentoring" (2007) 57:1 J Legal Educ 102 at 106.

11 Kay, Hagan & Parker, *supra* note 5 at 72.

12 Abner, "Situated Learning", *supra* note 4 at 99.

13 Kay, Hagan & Parker, *supra* note 5 at 73.

14 Blackett, *supra* note 1 at 280–81.

15 *Ibid* at 280.

mentoring.<sup>16</sup> When a new lawyer logs on to “Ten Minute Mentor” to download pre-recorded practice tips from senior lawyers onto his or her iPod,<sup>17</sup> that is also not mentoring. “Ten Minute Mentor” is an educational software tool.

Rapport supports the psychosocial functions of mentorship,<sup>18</sup> which may include acceptance, reassurance, friendship,<sup>19</sup> and conversation and storytelling, in which more experienced lawyers “maintain an essential narrative that passes on professional ideals to the next generation.”<sup>20</sup> True, different lawyers may—due to age, life experience, culture—carry different conceptions of the intimacy appropriate to a mentoring relationship.<sup>21</sup> In view of the human connection involved, however, mentoring must engage some feelings—of trust, respect, or loyalty, for example. Trust, in particular, has been argued to be “integral” to mentoring.<sup>22</sup> The dictionary emphasizes the trust dimension of the endeavour,<sup>23</sup> as does the Greek mythology from which the word derives.<sup>24</sup>

The public facet of mentoring exists because the relationship is forged in the workplace or the broader professional community. Here, the protégé is exposed to the mentor’s “professional artistry” or “knowing-in-practice.”<sup>25</sup> Mastery of client relations, negotiation, litigation strategy and counselling is especially amenable to education

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- 16 See Blackett, *supra* note 1 at 276-78 (mentoring is distinct from role-modelling). But see Ragins, *supra* note 1 at 494 (a mentor may also be a role model).
- 17 “Ten Minute Mentor”, online: Texas Young Lawyers’ Association <<http://www.tenminutementor.com/>>.
- 18 See Kathy E Kram, *Mentoring at Work: Developmental Relationships in Organizational Life* (Glenview, Ill.: Scott, Foresman and Company, 1985) at 23 (positing that the mentor’s essential functions fall into two key domains: “career functions” and “psychosocial functions”). Kram’s description of mentoring functions has received considerable support in subsequent literature: see e.g. Kay, Hagan & Parker, *supra* note 5; Georgia Chao, “Formal Mentoring: Lessons Learned from Past Practice” (2009) 40:3 Professional Psychology: Research and Practice 314; Johnson, *supra* note 8; Ragins, *supra* note 1.
- 19 See Ragins, *ibid* at 484.
- 20 Julie MacFarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* (Vancouver: University of British Columbia Press, 2008) at 41.
- 21 See Blackett, *supra* note 1 at 286, n 24. Mentoring scholars also disagree, for example, about whether mentoring requires friendship. See Blackett, *supra* note 1 at 283 (contending that a form of friendship is necessary to the mentoring relationship); Kram, *supra* note 18 at 38ff; Ragins, *supra* note 1 at 484, 512 (claiming that while friendship is often a key mentoring function, everyone may not desire the relationship to attain this level of intimacy). But see Gail Evans, *Play Like a Man, Win Like a Woman* (New York: Broadway Books, 2000); Pat Heim (with Susan K Golant), *Hardball for Women: Winning at the Game of Business*, revised ed. (New York: Plume, 2005) at 108ff (warning that friendship may not be helpful in the workplace context at all, pointing to the dangers of friendship going wrong in some workplace hierarchies and cross-gender interactions).
- 22 Tamara R Piety, “Tribute to the Scholarship of Frank Michelman: Meditations on Mentoring and the Scholar as Mentor” (2004) 39 Tulsa Law Review 583 at 588; see also Kram, *supra* note 18 at 164 (on the difficulty of fostering mentorship in organizations marked by “lack of trust” between workers).
- 23 *The Canadian Oxford Dictionary*, 1st ed, *sub verbo* “mentor” (“an experienced and trusted advisor or guide”).
- 24 When Odysseus went to fight the Trojan Wars, the goddess Athena came to earth in the form of Mentor, Odysseus’ trusted friend. Mentor guided and advised Odysseus’ son Telemachus, who would have been alone but for Mentor.
- 25 Donald A Schön, *The Reflective Practitioner* (New York: Basic Books, 1983) at viii; Donald A Schön, *Educating the Reflective Practitioner* (San Francisco: Jossey-Bass, 1987) at 12, 22.

through mentoring at work.<sup>26</sup> The workplace enables the mentor to supervise a new lawyer and provide exposure to challenging assignments. The mentor may also help a new lawyer navigate office politics and introduce him or her to a broader professional network.

Mentoring enhances new lawyers' sense of competence and helps them transition to effective practice. But it also socializes new lawyers into the profession and develops their ethical judgment by providing opportunities for a relational "moral dialogue" with experienced practitioners.<sup>27</sup> In turn, the mentoring relationship validates senior lawyers' professional experience, but also challenges them to improve relational skills such as listening, providing criticism<sup>28</sup> and generating trust.<sup>29</sup> In turn, mentors gain fresh insight, a loyal support base and a chance to give back to the profession.<sup>30</sup>

Mentorship benefits the public profession as a whole; again, these benefits accrue through relational contact. Mentoring ensures valuable knowledge is transmitted across generations. It may increase the profession's diversity,<sup>31</sup> if relationships across difference break down stereotypes, and provide equity-seeking lawyers with access to traditional power networks. Mentoring relationships may also foster an *esprit de corps* to mitigate against the increasingly fragmented, specialized nature of law practice today.

Beyond the benefits to the protégé, the mentor, and the profession, a business case exists for the utility of mentoring to effectively manage human capital.<sup>32</sup> A commitment to mentoring may enhance an organization's attractiveness to new

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- 26 Bryant G Garth & Joanne Martin, "Law Schools and the Construction of Competence" (1993) 43 J Legal Educ 469 at 482-85; John Sonsteng (with David Camarotto), "Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction" (2000) 26 Wm Mitchell L Rev 327 at 336, 352ff (two large American studies provide evidence that these lawyering skills are often learned through "observation of, and advice from" senior lawyers rather than in the doctrinal classroom); see also Hamilton & Brabbit, *supra* note 10 at 111-12, 129 (discussing both studies).
- 27 See Hamilton & Brabbit, *ibid* at 114, 126; Oseid, *supra* note 2 at 399-401.
- 28 Schön, *Educating the Reflective Practitioner*, *supra* note 25 at 153-54 (as an aid to providing criticism constructively, a mentor may enter into a sort of "contract" with the protégé. The mentor and protégé agree to sit together before a shared problem, and the mentor defines his or her "role in [the problem-solving] process as one of opening up new possibilities for action").
- 29 See Glynis French, *Mentoring Programs in the Federal Public Service: Status and Best Practices* (Ottawa: Public Service Human Resources Management Agency of Canada, 2004) at 12.
- 30 See Ragins, *supra* note 1 at 488, 493-94.
- 31 See David Clutterbuck & Belle Rose Ragins, *Mentoring and Diversity: An International Perspective* (Oxford: Butterworth-Heinemann, 2002). But see Alexandra Kalev, Frank Dobbin & Erin Kelly, "Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies" (2006) 71:4 American Sociological Review 589 at 590 (mentoring programs had only "modest" effects on managerial diversity; programs were more effective when coupled with workplace "structures establishing responsibility" for diversity, such as affirmative action plans and diversity committees).
- 32 See Thomas J DeLong, John J Gabarro & Robert J Lees, "Why Mentoring Matters in a Hypercompetitive World", *Harvard Business Review* 86:1 (January 2008) 115 at 121; Geoff Colvin, "Leader Machines", *Fortune* (1 October 2007) 98 at 100, 102; Government of Canada, "HR for Employers: Mentoring in My Business" (24 March 2009), online: <<http://www.hrmanagement.gc.ca/gol/hrmanagement/site.nsf/eng/hr11546.html#Business>> (businesses in both Canada and the United States increasingly accept that economic vitality today depends on intelligently managing the scarce resource of human ability).

lawyers,<sup>33</sup> improve employee retention and boost productivity.<sup>34</sup> Mentoring may also foster succession planning by developing leadership skills in newer lawyers and ensuring that a firm's hard-won expertise is not lost when older lawyers retire.<sup>35</sup>

Straddling, as it does, the public-private divide, mentoring is susceptible to unique challenges. The private, relational facet of mentorship makes it dependent on the mentor and protégé's interpersonal skills and relational commitment. The public, workplace-community facet of mentorship, meanwhile, means the pressures of business and practice affect mentoring relationships, as do professional and workplace norms. Further, mentoring is sensitive to the prejudices of the professional community and of the broader community in which professionals practice. If lawyers selectively mentor new members from only dominant groups, the profession is engaged in a public and political act of selective exclusion.<sup>36</sup> If, by contrast, lawyers welcome newcomers from equity-seeking groups through mentorship, that decision is a public and political act to foster professional diversity.<sup>37</sup>

Finally, both the relational and workplace-community facets of mentorship are complicated by professional hierarchy. The protégé is often younger and less skilled than the mentor. His or her position in the workplace is less secure. Further, the protégé may belong to one or more equity-seeking groups aiming to break down barriers in the profession. If handled without sensitivity, hierarchy may hurt both facets of mentorship: hierarchy may inhibit trust;<sup>38</sup> pressure the protégé to assimilate into a dominant workplace culture;<sup>39</sup> or, in the worst case scenario, create the potential for abuse or exploitation.<sup>40</sup>

A descriptive framework for mentorship, which emphasizes the dual public-private character of the endeavour, provides a useful lens through which to understand the history of lawyer mentoring in the province of Ontario.

33 See Tammy D Allen & Kimberly E O'Brien, "Formal Mentoring Programs and Organizational Attraction" (2006) 17 Human Resource Development Quarterly 43 at 53.

34 See David Clutterbuck, *Everyone Needs a Mentor* (London, UK: Chartered Institute of Personnel and Development, 2001); David N Laband & Bernard F Lentz, "Workplace Mentoring in the Legal Profession" (1995) 61:3 Southern Economic Journal 783 at 783, 797-99. But see Christina M Underhill, "The Effectiveness of Mentoring Programs in Corporate Settings: A Meta-Analytical Review of the Literature" (2006) 68 Journal of Vocational Behavior 292 at 302 (stressing the need for more studies to examine the impact of mentoring on a protégé's commitment to the organization).

35 See Margo Murray, *Beyond the Myths and Magic of Mentoring: How to Facilitate an Effective Mentoring Process* (San Francisco: Jossey-Bass, 2001) at 26-28.

36 See I Scott Messinger, "The Judge as Mentor: Oliver Wendell Holmes, Jr., and His Law Clerks" (1999) 11 Yale JL & Human 119 at 151, 140-41; Blackett, *supra* note 1 at 276, 279.

37 See Blackett, *ibid* at 283.

38 See Blackett, *ibid* at 282-83, 286, n 26; Stacy Blake, "At the Crossroads of Race and Gender: Lessons from the Mentoring Experiences of Professional Black Women" in Audrey J Murrell, Faye J Crosby & Robin J Ely, eds, *Mentoring Dilemmas: Developmental Relationships within Multicultural Organizations* (Mahwah, NJ: Lawrence Erlbaum Associates, 1999) 83 at 86, 91-95 (new lawyers from equity-seeking groups may find it hard to trust mentors they perceive to reflect the dominant or insider majority of the profession—white, male, able-bodied, privileged and heterosexual).

39 See Blackett, *ibid* at 276, 283-84.

40 See Kram, *supra* note 18 at 99 (negative self-esteem, anger, depression, or chronic stress may hinder a mentor's ability to create a safe relationship with the protégé); *ibid* at 108ff (in a traditionally male-dominated profession like law, cross-gender mentoring is at risk for dysfunctional and potentially abusive behaviour driven by sex-role stereotypes); see generally W Brad Johnson & Nancy Nelson, "Mentoring Relationships in Graduate Education: Some Ethical Concerns" (1999) 9:3 Ethics and Behavior 189.



### III. A HISTORICAL SKETCH OF LAWYER MENTORING IN ONTARIO

The historical sketch of lawyer mentoring provided in this article is preliminary. W. Wesley Pue contends that “we still know far less about the history of legal education in Canada than we ought to.”<sup>41</sup> This contention holds especially true in the context of lawyer mentoring. Mentoring is, and was, a central component of a new lawyer’s education. Yet a systematic historical study of lawyer mentoring in Canada has yet to be attempted. The historical record of lawyer mentoring, moreover, presents analytical challenges. Surviving sources—anecdote, memoir, obituary, editorial letter—are not always easy to interpret.

This article does not shy away from anecdotal sources. Lawyers have conveyed much of the history of mentorship through reminiscences, a practice which continues to this day: mentoring experiences lend well to anecdote and storytelling.<sup>42</sup> Canadian legal scholars, moreover, have not historically considered mentorship a subject for the kind of qualitative, sociological study that is becoming more prevalent today.<sup>43</sup> My focus on Ontario, furthermore, is not intended to suggest that all the important history of lawyer mentorship took place in that province.<sup>44</sup> The Law Society of Upper Canada does have an especially rich history among Canadian law societies regarding the training of new lawyers, being the oldest law society in Canada’s provinces and territories.<sup>45</sup> More systematic research on the history of lawyer mentorship in both Ontario and the rest of Canada will, however, add layers of understanding to the impressions I provide here.

A framework for mentorship emphasizing its public–private nature usefully guides both historical and present-day analysis of lawyer mentorship. My intent is not to suggest that the framework I offered at the outset of this piece is ahistorical or “exist[s] outside of time.”<sup>46</sup> Current scholarly understanding of mentoring is naturally influenced by current concerns and context. That said, since lawyer mentoring was and remains an interpersonal relationship forged in the workplace, a framework for mentoring emphasizing its public–private character is valuable for historical analysis. The history of lawyer mentoring, viewed through the lens of the framework, highlights important themes. Specifically, mentoring succeeded when lawyers established bonds

41 W Wesley Pue, “In Pursuit of Better Myth: Lawyers’ Histories and Histories of Lawyers” (1995) 33:4 *Alta L Rev* 730 at 765 [Pue, “In Pursuit of Better Myth”].

42 See e.g. David Stockwood, “The Mentor” (1997) 16:2 *Advocates’ Soc J* 1 [Stockwood, “The Mentor”]; David Stockwood, “Two steps forward, one step back” (1999) 18:1 *Advocates’ Soc J* 1; David Stockwood, “Three Mentors” (2005) 25:2 *Advocates’ Soc J* 1 [Stockwood, “Three Mentors”]; see also Ronald L Marmen, “A Tribute to Our Mentors: Jerold S. Solovy” (1995) 9 *Chicago Bar Association Record* 32 (for similar reminiscences in the American context).

43 Abner, “Situated Learning”, *supra* note 4 (for a qualitative study of lawyer mentoring in Ontario today); see also Nancy J Reichman & Joyce S Sterling, “Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers” (2001) 29 *Capital U L Rev* 923 (for a qualitative study of lawyer mentoring programs in the United States).

44 See Pue, “In Pursuit of Better Myth”, *supra* note 41 at 764.

45 See Christopher Moore, *The Law Society of Upper Canada and Ontario’s Lawyers, 1797-1997* (Toronto: University of Toronto Press, 1997) [Moore, *Law Society*].

46 See David Hackett Fischer, *Historians’ Fallacies: Toward a Logic of Historical Thought* (New York: Harper & Row, 1970) at 150-51, cited in Pue, “In Pursuit of Better Myth”, *supra* note 41 at 754-55.

and created welcoming workplaces and communities. Mentorship suffered when relational rapport was neglected or strained, and when exclusion or exploitation marked the legal workplace and broader professional community.

### A. Historical Impressions of Quality Lawyer Mentoring

A good deal of nostalgia about excellence in lawyer mentoring exists today. Canadian commentators write that in “easier times,” under the old guild model of apprenticeship, an articulated student in Ontario and other Canadian provinces “could expect ... an intimate relationship” with his principal.<sup>47</sup> In that relationship, the young lawyer supposedly learned the law and legal skills by observing and assisting the principal and thus grew into the profession instead of being pitched into it.<sup>48</sup> As the Honourable Ian Binnie reminisced, with characteristic wit:

The junior lawyers followed the senior lawyers around, and eventually we grew into mutant copies. So Walter Williston’s juniors learned how to mumble, some of Barry Pepper’s juniors acquired fake English accents, and George Finlayson’s juniors developed what today would be called an “attitude problem.” ... I had the privilege of articling for Bert Mackinnon, who was a perfect gentleman.<sup>49</sup>

American commentators exhibit similar wistfulness about lawyer mentoring in the past.<sup>50</sup> This wistfulness may be tied to increasing malaise in both the Canadian<sup>51</sup> and American<sup>52</sup> legal profession. Some commentators suggest lawyers must return to

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47 Maureen F Fitzgerald, “Evaluating Articling – A Recommended Process” (1998) 16:2 *The Journal of Professional Legal Education* 209 at 210, 215, 223, n 1, 225, n 10; Neil Gold, “Pre-Admission Education Training in Canada: Some Reflections and a Survey” (Paper presented at the Commonwealth Legal Education Association, May 1983); see also Francis G Carter, *The Middlesex Bench and Bar* (London, Ont.: Middlesex Law Association, 1969) at 110-11 (“the lawyers of the Middlesex Bar of yesterday had a sense of camaraderie which is gone forever”).

48 James Taylor, *Report to the Law Society of British Columbia on Professional Legal Training and Competence* (Vancouver: Law Society of British Columbia, 1983) at 118; see also Michael Code, Chair, “The View from the Profession” (panel discussion on mentoring at Centre for Professionalism, Ethics and Public Service, University of Toronto’s Faculty of Law symposium “Can Legal Ethics be Taught?”, 4 April 2008), online: <<http://www.law.utoronto.ca/conferences/legalethics.html>> [“The View from the Profession”] (description of discussion can be found on symposium website under the Symposium Report: “Can Legal Ethics be Taught Report (PDF)”). Donalee Moulton, “Go North, young lawyer: Canada’s northern territories beckon” 27:14 *The Lawyers Weekly* (17 August 2007) 21, 24 (today, small Canadian communities in need of new lawyers build on nostalgia for an earlier time by advertising the guild-like model of mentoring they retain).

49 The Honourable Ian Binnie, “In praise of oral advocacy” (2003) 21:4 *Advocates’ Soc J* 3.

50 Daniel D Barnhizer, “Mentoring as Duty and Privilege” (2003) *Mich BJ* 46; Sol M Linowitz (with Martin Mayer), *The Betrayed Profession: Lawyering at the End of the Twentieth Century* (New York: Charles Scribner’s Sons, 1994) at 97; Elizabeth K McManus, “Intimidation and the Culture of Avoidance: Gender Issues and Mentoring in Law Firm Practice” (2005) 33:1 *Fordham Urb LJ* 217.

51 See Alec Scott, “Exile on Bay Street” *Toronto Life* 41:9 (September 2007) 43; Gavin MacKenzie, “The Valentine’s Card in the Operating Room: Codes of Ethics and the Failing Ideals of the Legal Profession” (1995) 33:4 *Alta L Rev* 859; David M Tanovich, “Law’s Ambition and the Reconstruction of Role Morality in Canada” (2005) 28:2 *Dal LJ* 267.

52 See e.g. Anthony T Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Cambridge, Mass: Belknap Press of Harvard University Press, 1993); Mary Ann Glendon, *A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming American Society* (New York: Farrar, Strauss and Giroux, 1994); Linowitz, *supra* note 50 (these are considered three seminal American texts on the subject).

the professional ideals of the past if the profession is to address current dissatisfaction among many of its members.<sup>53</sup>

The nostalgia for the mentoring of the past is part professional myth-making—the deliberate creation of positive professional lore<sup>54</sup>—but it is also based in historical evidence. For the first three decades after the Law Society of Upper Canada was established in 1797, apprenticeship formed “the heart of Convocation’s law-training” program.<sup>55</sup> Since the Law Society relied on the apprentice-principal relationship as the primary vehicle for the professional growth of new lawyers, a future lawyer depended “upon what his master could and should teach him and upon what he could pick up” through self-study.<sup>56</sup> Legal historian G. Blaine Baker concedes that surviving accounts of articling from the nineteenth century may be difficult to interpret, since they “tend to be anecdotal, self-congratulatory, or critical.”<sup>57</sup> Still, Baker and others posit that the Law Society of Upper Canada set an early tone of “self-conscious concern” about the education and professional formation of new lawyers.<sup>58</sup>

Sources suggest, moreover, that some lawyers internalized Convocation’s concern about legal education by taking their mentoring responsibilities seriously. Practitioners in the early nineteenth century established mentoring rapport, for example, by reading law with their students.<sup>59</sup> Further, some senior members of the Bar were sensitive to the integration of new lawyers into the workplace, providing much-needed supervision and advice. George MacKenzie, who hired the young Sir John A. Macdonald as an apprentice in his Kingston law office in the 1830s, ensured that Macdonald had adequate guidance to manage a branch office in Napanee by sending his apprentice regular instructions by horseback courier.<sup>60</sup>

Office apprenticeships in Ontario continued to train new lawyers throughout the nineteenth century, although the Law Society of Upper Canada did supplement apprenticeship with lectures and examinations after the 1830s.<sup>61</sup> The lectures had a “fitful,” sporadic quality as Convocation vacillated over the relative merits of

53 Scott, *supra* note 51 at 44; Linowitz, *ibid*; Kronman, *ibid*.

54 See Neil Duxbury, “History as Hyperbole” (1995) 15 *Oxford J Legal Stud* 486 (on the concern that myth-making by the legal profession obstructs nuanced historical analysis).

55 G Blaine Baker, “Legal Education in Upper Canada 1785-1889: The Law Society as Educator” in David H Flaherty, ed, *Essays in the History of Canadian Law*, vol 2 (Toronto: University of Toronto Press for the Osgoode Society, 1983) 49 at 79-80.

56 William Renwick Riddell, *The Legal Profession in Upper Canada in its Early Periods* (Toronto: Law Society of Upper Canada, 1916) at 38. I thank Doug Hay for directing me to this and several other sources of legal history cited in the article.

57 Baker, *supra* note 55 at 82.

58 *Ibid* at 50-51; John PS McLaren, “The History of Legal Education in Common Law Canada” in Mr. Justice Roy J Matas & Deborah J McCawley, eds, *Legal Education in Canada* (Montreal: Federation of Law Societies of Canada, 1987) 111 at 115, 118.

59 See James Cleland Hamilton, *Osgoode Hall: Reminiscences of the Bench and Bar* (Toronto: The Carswell Company, 1904) at 150-51; Moore, *Law Society*, *supra* note 45 at 90-92.

60 Baker, *supra* note 55 at 83.

61 John Law, “Articling in Canada” (2002) 43:2 *SText L Rev* 449 at 451. Contrast Baker, *supra* note 55 at 50-51 with Mark D Walters, “‘Let Right Be Done’: A History of the Faculty of Law at Queen’s University” (2007) 32:1 *Queen’s LJ* 314 at para 14 (legal historians disagree over whether this academic program for aspiring lawyers was a “seriously educative enterprise” or “little more than a trade school supplementing office apprenticeships”).

apprenticeship versus classroom instruction,<sup>62</sup> and some students working outside the provincial capital resisted onerous travel to Toronto for term-time.<sup>63</sup> Apprenticeship, however, provided continuing opportunities for lawyer mentoring. Evidence survives indicating that some lawyers negotiated the relational and workplace facets of mentoring well during this period. Since nepotism was common, elite lawyers encouraged sons and nephews to join the profession.<sup>64</sup> Family connection provided a ready-made bond for the purposes of mentoring. Thus, for example, in the mid-nineteenth century, Upper Canadian legal giant William Hume Blake<sup>65</sup> transmitted to his two sons, Edward<sup>66</sup> and Samuel Blake,<sup>67</sup> “an exceptional understanding of the Canadian legal system, particularly of equity law.”<sup>68</sup>

Sources also suggest that lawyers cultivated workplace norms and customs to make the law office welcoming for the novice lawyer—or at least for novice lawyers with suitable family or social connections. For example, one Upper Canadian law firm active throughout the nineteenth century is described as a “nursery of many bright lads.”<sup>69</sup> This phrase echoes Ben Jonson’s description of sixteenth- and seventeenth-century English Inns of Court as the “noblest nurseries of humanity,” and evokes a legal workplace which “awakened” new lawyers’ intellectual curiosity and instilled “social and professional skills.”<sup>70</sup>

The end of the nineteenth century marked a turning point for the education of young lawyers in Ontario. In 1889, the Law Society of Upper Canada established a permanent, mandatory law school at Osgoode Hall and made classroom instruction compulsory for all Ontario law students.<sup>71</sup> The formation of new lawyers in Ontario thus became, and remains to this day, “a hybrid of classroom instruction and articulated

62 McLaren, *supra* note 58 at 117; “Law Examinations” (1868) 4 Can LJ 133 at 134, cited in Curtis Cole, “A Hand to Shake the Tree of Knowledge’: Legal Education in Ontario, 1871-1889” (1986) 17:3 *Interchange: A Quarterly Review of Education* 15 at 18 (capturing some Benchers’ sceptical views of the lectures’ value: “The benefit of the lectures in Term have proved to be at least questionable, and productive of little but disorder and ‘skylarking’”).

63 Law, *supra* note 61 at 451.

64 See Carol Wilton, “Introduction: Inside the Law – Canadian Law Firms in Historical Perspective” in Carol Wilton, ed, *Essays in the History of Canadian Law*, vol 7 (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 1996) 3 at 10, 16 [Wilton, “Introduction”]; Moore, *Law Society*, *supra* note 45 at 106.

65 (1809-1870) Upper Canadian lawyer, politician, and judge; see Donald Swainson, “Blake, William Hume” in Frances G Halpenny & Jean Hamelin, eds, *Dictionary of Canadian Biography*, vol 9: 1861-1870 (Toronto: University of Toronto Press/ Les Presses de l’université Laval, 1976) at 55-59.

66 Dominick Edward Blake, (1833-1912) Toronto lawyer, Premier of Ontario, and Leader of the Liberal Party of Canada; see Ben Forster & Jonathan Swainger, “Blake, Edward” in Ramsay Cook & Jean Hamelin, eds, *Dictionary of Canadian Biography*, vol 14: 1911-1920 (Toronto: University of Toronto Press/Les Presses de l’université Laval, 1998) at 74-84.

67 (1835-1914) Toronto lawyer, judge, philanthropist and social reformer; see John D Blackwell, “Blake, Samuel Hume” in Cook & Hamelin, *ibid* at 85-88.

68 TD Regehr, “Elite Relationships, Partnership Arrangements, and Nepotism at Blakes, a Toronto Law Firm, 1858-1942” in Carol Wilton, ed, *Essays in the History of Canadian Law*, vol 7 (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 1996) 207 at 217.

69 Hamilton, *supra* note 59 at 149.

70 Anton-Hermann Chroust, “The Beginning, Flourishing and Decline of the Inns of Court: The Consolidation of the English Legal Profession After 1400” (1956) 10:1 *Vand L Rev* 79 at 100; see Messinger, *supra* note 36 at 120.

71 Cole, *supra* note 62 at 15.

apprenticeship.<sup>72</sup> The Law Society's commitment to a professional law school fit within evolving notions of professionalism at the turn of the twentieth century. Lawyers were, to a degree, trading "gentlemanly worth" for "formal qualifications based on demonstrated expertise" as the primary claim of the professional.<sup>73</sup>

Classes at Osgoode, however, were only held in the mornings or evenings, leaving a bulk of daily time for law students to devote to office work.<sup>74</sup> This schedule evidenced the Law Society's continuing belief in the merits of learning through apprenticeship and provided opportunity for mentoring. In the 1920s and 1930s, at the Toronto firm Mason, Foulds (now WeirFoulds), several mentoring relationships emerged and the firm's workplace culture supported mentorship. J. J. Robinette,<sup>75</sup> called to the Ontario Bar in 1929, came under Gershom Mason's "instructive and enduring influence" while articling at Mason, Foulds.<sup>76</sup> The Honourable John Arnup,<sup>77</sup> called to the Ontario Bar in 1935, recalled learning much of the art of advocacy from "Bill" Gale, later Chief Justice of Ontario,<sup>78</sup> who was his senior by a couple of years at the firm;<sup>79</sup> Arnup also credited his strong first appearance at the Supreme Court of Canada to "the Mason Foulds training."<sup>80</sup> During this era, members of the bench also cultivated mentoring bonds. A 1928 obituary for Ontario Supreme Court Justice William Ferguson remembered the judge to have "fostered with true parental care the younger lawyers."<sup>81</sup>

By 1957, the Law Society had experienced mounting pressure to follow the Harvard-style legal education model, and thus largely relinquished its substantive law teaching function to law faculties in Ontario universities.<sup>82</sup> A student would now study in a university setting full time toward a three-year degree. Nonetheless, articling requirements in Ontario remained.<sup>83</sup> Again, anecdotal evidence suggests lawyers continued to form positive mentoring relationships during articling and beyond. Reminiscences from lawyers called to the Ontario Bar in the 1960s and 70s highlight the value of the relational bond in mentoring. Gregory Goulin, for example, expressed gratitude to two "[w]onderful lawyers [who] took me under their wings"

72 *Ibid* at 25.

73 Moore, *Law Society*, *supra* note 45 at 147.

74 *Law*, *supra* note 61 at 452.

75 (1906–96) Toronto litigation lawyer; see Jack Batten, *Robinette: The Dean of Canadian Lawyers* (Toronto: Macmillan of Canada, 1984) [Batten, *Robinette*]; George D Finlayson, *John J. Robinette: Peerless Mentor: An Appreciation* (Toronto: The Osgoode Society for Canadian Legal History, 2003).

76 Batten, *Robinette*, *ibid* at 31.

77 (1911–2005) Former Justice, Ontario Court of Appeal; see Sandra Martin, "John Arnup, Lawyer and Judge 1911–2005", *The Globe and Mail* (29 October 2005) S9.

78 George Alexander ("Bill") Gale, (1906–97); see Chad Skelton, "Ontario chief justice on bench 30 years", *The Globe and Mail* (28 July 1997) C10.

79 Jack Batten, *Judges* (Toronto: Macmillan of Canada, 1986) at 231.

80 Christopher Moore, "John Douglas Arnup, 1911–2005: A great leader of Ontario's legal profession" (2005) 16:32 *Law Times* 8.

81 (1869–1928); see "Mourned by Friends, by Bench and Bar, Eminent Jurist Dies", *The Globe* (10 November 1928) News 17–18.

82 See C Ian Kyer & Jerome E Bickenbach, *The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario 1923–1957* (Toronto: The Osgoode Society, 1987) (provides an in-depth study of this period in Ontario's history of legal education).

83 See Baker, *supra* note 55 at 79.

when he began a criminal practice in a small Ontario community over 30 years ago.<sup>84</sup> The protective image Goulin evoked speaks to the trust he was able to put in his mentors. David Stockwood,<sup>85</sup> called to the Ontario Bar in 1967, acknowledged a debt to Eddie Goodman,<sup>86</sup> who instinctively understood the value of loyalty to the mentoring relationship. “[Goodman] had been a tank commander in the Second World War. He rarely lost his temper, but you did not want to be around when he did. Clients who were abusive to young lawyers would really set him off.”<sup>87</sup>

Successful mentors also negotiated the workplace and community facets of mentoring well. Some lawyers who entered their prime in the post-war decades are fondly remembered for creating welcoming workplaces. The Honourable Charles Dubin,<sup>88</sup> while still in practice, made young lawyers feel “part of the team” when he brought them along to the Supreme Court of Canada, introducing them to counsel and judges, and giving them credit for their work.<sup>89</sup> Ottawa lawyer, Gordon Fripp Henderson, found time to chat with students and associates, inquiring about both their files and families.<sup>90</sup> The Honourable Ian Binnie remembered that in the 1960s, senior and junior lawyers connected over coffee at the (now defunct) Honey Dew restaurant on the corner of Bay Street and Adelaide Street in Toronto,<sup>91</sup> suggesting a professional community that informally created public places for mentorship to occur.

## B. Historical Impressions of Lawyer Mentoring Challenges

Not all Canadian lawyers of decades past received effective mentoring. In particular, the relational facet of mentoring suffered when lawyers, preoccupied by the time or business pressures of work, failed to attend to mentoring relationships. The workplace-community facet of mentorship was poorly negotiated when workplace norms and customs enabled lawyers to exploit apprentices as part of the workplace hierarchy; or when lawyers internalized community prejudices about outsiders.

Historical sources suggest that lawyer mentoring, like any relationship between two people, faltered when it was neglected. Specifically, the time and business pressures of legal practice historically strained many lawyers’ abilities to mentor effectively. As early as 1849, law students at the Osgoode Club complained that practitioners could not make time to teach apprentices: the lawyers’ “business

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84 Greg Goulin, “Some thoughts on articling” (2008) 33:3 Briefly Speaking 22.

85 (1941–2008) Toronto litigation lawyer; see “In Memoriam David T. Stockwood, Q.C., L.S.M. (1941–2008)”, online: Stockwoods Barristers <[www.stockwoods.ca/lawyers-david-stockwood.html](http://www.stockwoods.ca/lawyers-david-stockwood.html)>.

86 Edwin Alan Goodman, (1918–2006) Toronto lawyer and political figure active in the Ontario Progressive Conservative Party; see Sandra Martin, “Eddie Goodman, Lawyer 1918–2006”, *The Globe and Mail* (25 August 2006) S11.

87 Stockwood, “Three Mentors”, *supra* note 42.

88 (1921–2008) Former Chief Justice of Ontario; see Sandra Martin, “Judge who probed use of drugs in sports was ‘a complete man of the law’”, *The Globe and Mail* (28 October 2008) S10.

89 Stockwood, “Three Mentors”, *supra* note 42; Stockwood, “The Mentor”, *supra* note 42.

90 Warren Kinsella, “A barrister and a gentleman: Fond farewell to Gordon Henderson”, *The Ottawa Citizen* (23 August 1993) A9.

91 The Honourable Ian Binnie, “The boom in the law business” (2006) 25:3 Advocates’ Soc J 4 at 6.

precludes them from imparting regular systematic instruction,” wrote the students.<sup>92</sup> In 1910, Charles Elliott expressed concerns about mentoring to the Ontario Bar Association. Practitioners “have not the time” to mentor law students, he stated.<sup>93</sup> Elliott alluded to the “modern conditions” of law office work: typewriters were increasing the pace.<sup>94</sup> It was “only human,” Elliott continued, for the modern lawyer to “give first attention to his [own] office work which is all absorbing.”<sup>95</sup> In 1913, Ira MacKay echoed Elliott’s concerns. Apprentices received “scarcely any assistance in their work,” MacKay told the Law Society of Alberta.<sup>96</sup> The law had become a “profession of apprentices without principals.”<sup>97</sup>

Historically, lawyers were conscious of the negative consequences of insufficient mentorship for the new lawyer, the profession and the public. In 1855, a letter to the *Upper Canada Law Journal* warned that new lawyers who had spent five years of apprenticeship “copying and serving papers” rather than receiving education and guidance from their principals might be unable to “act with safety and advantage for a client.”<sup>98</sup> An 1888 article in the *Canada Law Journal* pointed to the work inefficiencies of inadequately mentored new lawyers in Canada: “he gropes in the dark along a labyrinthine path, where the help of a skilful guide would save many a needless step, and deliver him from many a pitfall.”<sup>99</sup> An editorial in the *Canadian Law Times*, published in 1919, echoes the theme of the bewildered novice lawyer negotiating the steep learning curve of new practice without adequate guidance:

[F]or the most part the young lawyer has to make up his knowledge of practical things by pawing over the papers and facts that come before him. He learns how shares are issued, by furtively inspecting a stock certificate; and gets his insight into the procedure by Private Bills when he peeks into the Gazette.<sup>100</sup>

The lack of guidance some new lawyers felt from the older generation likely catalyzed voices within the profession to call for more systematic instruction of the law in a university-style setting by teachers free from the demands of law practice.<sup>101</sup>

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92 Law Society of Upper Canada, *Journal of Proceedings of the Convocation of Benchers of the Law Society of Upper Canada, 1797-1890*, vol 3, at 129-33, cited in Baker, *supra* note 55 at 82.

93 Charles Elliott, “Legal Education in Ontario” (address delivered at the Ontario Bar Association, 29 December 1910), (1911) 31 Can LT 173 at 177.

94 *Ibid.*

95 *Ibid* at 178.

96 Ira A MacKay, “The Education of a Lawyer” (address delivered at the Third Annual Meeting of the Law Society of Alberta, December 1913), (1940-42) Alta LQ 103 at 110, cited in W Wesley Pue, “Common Law Legal Education in Canada’s Age of Light, Soap and Water” (1996) 23 Man LJ 654 at 676.

97 MacKay, *ibid*; see also Shirley Denison, “Legal Education in Ontario” (1922) 42 Can LT 236 at 240 (the author observes that firm lawyers had “[i]n most instances ... forgotten” about teaching their apprentices).

98 ABV, “For the ‘Law Journal’” (1855) 1 UCLJ 153 at 163-64; see also Evins, “Proposed Law Association” (1863) 9 UCLJ 113 at 135-36 (letter to the editors expressing concern about “the immense number of men and boys who are daily entering [the] ranks [of the legal profession] without the education necessary to fit them for its duties”).

99 “Legal Education in the United States” (1888) 24:8 Can LJ 238 at 238.

100 “The Periodic Outcry for a ‘Government by Business Men’” (1919) 39:4 Can LT 201 at 203.

101 See Elliott, *supra* note 93; “Legal Education” (1918) 54:4 Can LJ 124; Professor JT Herbert, “An Unsolicited Report on Legal Education in Canada” (1921) 41 Can LT 593.

Problematic workplace norms and customs also challenged the quality of mentoring relationships. Historically, there were few standards for articling and little regulation of the process by law societies. Labour laws were less stringent and potential exploitation of vulnerable workers was part of the industrial ethos. Most law firms, for example, paid apprentices little or nothing, or required payment from students in exchange for an articling position.<sup>102</sup> Mentoring responsibilities sometimes fell to the side in the pursuit of profit. In 1863, a contributor to the *Upper Canada Law Journal* voiced concern that lawyers were recklessly hiring up to four articling students per lawyer, insensitive to the students' development, merely to get "their office work cheaply done."<sup>103</sup> Thomas Reid, a leader in the Toronto Bar in the 1920s and 30s, was undisguised in his exploitative approach to junior lawyers: "What we want," he is recorded as saying, 'is cheap labour.'<sup>104</sup>

Some law students braved the difficult financial conditions resolutely. In the early 1920s, Allan Graydon worked as an articulated clerk at the Toronto firm Blakes for three years without pay, banking on positive work experience to temper the financial strain. Graydon recalled "the opportunities for the future afforded by being with Blakes as far more valuable than any monetary remuneration."<sup>105</sup> As T. D. Regehr observed, "[o]nly exceptionally dedicated young lawyers, or those with rich and influential fathers, could afford such schooling, excellent though it might be."<sup>106</sup> Remembering the Great Depression years, lawyers who did not come from affluence recalled chronic debt during articles<sup>107</sup> and "pleas for a raise" which "fell on deaf ears."<sup>108</sup> Others were nominally registered for "articling on paper" but received no office instruction at all.<sup>109</sup> A mentoring bond would have been difficult to forge in this kind of work environment.

Mentoring also faltered when lawyers did not negotiate the hierarchy of the workplace with sensitivity. In 1910, Charles Elliott described to the Ontario Bar Association the law student's vulnerability:

He does odd jobs, runs messages, sweeps the office, lights the fires, copies letters, goes for the mail, serves and files papers ... occasionally is honoured by carrying his chief's red brief

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102 Cole, *supra* note 62 at 16; Moore, *Law Society*, *supra* note 45 at 86-87, 90-91.

103 Evins, *supra* note 98 at 135-36.

104 Wilton, "Introduction", *supra* note 64 at 24, citing Gordon McMillan, "McMillan Binch: A History, 1903-1976" (1976), [unpublished, archived at Osgoode Hall Great Library].

105 Regehr, *supra* note 68 at 233.

106 *Ibid.*

107 See Philip Girard, *Bora Laskin: Bringing Law to Life* (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2005) at 15, 63-64. See also Moore, *Law Society*, *supra* note 45 at 218.

108 Wilton, "Introduction", *supra* note 64 at 21.

109 Girard, *supra* note 107 at 73; Moore, *Law Society*, *supra* note 45 at 218.



bag, the blue having largely gone out of fashion, and now and again copies some documents full of technical terms entirely unknown to him.<sup>110</sup>

In short, “[t]he student is told to go and he goeth, come and he cometh.”<sup>111</sup> In a similar vein, the Honourable David Vanek, called to the Ontario Bar in 1939, indicated in his memoirs that his principal had little time to guide his learning. He recalled being “dispatched hither and yon, to file papers” during his articles; and being “allowed to trot beside [his principal], carrying his briefcase” on the way to motions court.<sup>112</sup> By the 1950s and 60s, Canadian lawyers were essentially reiterating the concern of the 1863 contributor to the *Upper Canada Law Journal*: the profession was using the articling program as a supply of cheap labour, while showing “little or no concern as to whether or not the student [was] learning anything.”<sup>113</sup>

As a professional community, lawyers also held prejudices about outsiders. Canada’s professional legal culture, Pue argues, was historically “xenophobic, elitist and generally aligned with capital interests.”<sup>114</sup> Providing evidence for Pue’s argument, new lawyers from equity-seeking groups had particular difficulty in obtaining mentoring quite late into the twentieth century. Legal elites mentored the children of other elites.<sup>115</sup> Members of equity-seeking groups struggled to obtain apprenticeships, far less forge mentoring relationships with senior lawyers. The articling requirement, in particular, functioned as a “screening device” to discourage women and minorities from pursuing legal careers.<sup>116</sup> Clara Brett Martin, Canada’s first woman lawyer, had difficulty securing an articling position;<sup>117</sup> Delos Rogest Davis, one of the first black lawyers to practice in Ontario, was unable to obtain articles for many years.<sup>118</sup>

A “subculture” of legal mentoring emerged in Ontario as lawyers from equity-seeking groups sought to help newcomers who would be excluded from traditional power networks.<sup>119</sup> In the early 1950s, for example, Helen Okuloski—of Polish descent and one of Hamilton, Ontario’s few female law partners—hired

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110 Elliott, *supra* note 93 at 174.

111 *Ibid* at 176.

112 David Vanek, *Fulfilment: Memoirs of a Criminal Court Judge* (Toronto: Dundurn Press, 1999) at 80.

113 FW Alexander “Legal Education and Training, Past and Present, with Particular Reference to the Bar Admission Course” (address to the College of Law, delivered at the University of Saskatchewan, 17 March 1961), (1961) 26:2 Sask Bar Rev & Law Soc’y Gaz 46 at 50-51; Graham WS Scott, “The Articling Component in Legal Education” in Matas & McCawley, *supra* note 58 at 415-16, citing the *Report of the Special Committee of the Conference of Governing Bodies of the Legal Profession in Canada* (1958).

114 Pue, “In Pursuit of Better Myth”, *supra* note 41 at 762-63.

115 Scott, *supra* note 51 at 49 (Jay Swartz of Davies, Ward, Phillips & Vineberg LLP remembers: “It used to be said of McCarthy’s that they hired the sons of big clients and judges. And I do mean sons”).

116 Kyer & Bickenbach, *supra* note 82 at 75.

117 See Constance Backhouse, “‘To Open the Way for Others of my Sex’: Clara Brett Martin’s Career as Canada’s First Woman Lawyer” (1985) 1:1 CJWL 1.

118 See Julius Isaac, “Delos Rogest Davis, K.C.” (1990) 24:4 Law Soc’y Gaz 293.

119 Philip J Sworden, “‘A Small United Nations’: The Hamilton Firm of Millar, Alexander, Tokiwa, and Isaacs, 1962-1993” in Carol Wilton, ed, *Essays in the History of Canadian Law*, vol 7 (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 1996) 469 at 478-79.

Lincoln Alexander,<sup>120</sup> the second black lawyer to practice in Hamilton.<sup>121</sup> Other equity-seeking lawyers forged mentoring relationships with professionals who did have access to power, often through family networks. At age 26, and newly called to the Ontario Bar, Helen Kinnear<sup>122</sup> joined her father's firm in Port Colborne. The senior Kinnear hung a new sign advertising the offices of "Kinnear & Kinnear," publicly affirming confidence in his daughter.<sup>123</sup> Even mentoring from a powerful, mainstream professional, however, might not have protected an equity-seeking lawyer from discrimination. The young Bora Laskin<sup>124</sup> received committed mentoring from two Toronto law professors: Cecil Wright and W. P. M. Kennedy, who "loved Laskin like a son."<sup>125</sup> Still, Laskin struggled to overcome anti-Semitism upon his return to Toronto from Harvard during the Depression, causing the future Chief Justice to suffer "shattering disillusionment with the profession."<sup>126</sup>

In summary, the historical sketch of lawyer mentoring provided above yields a more variegated and complex picture than the romanticized ideal. History suggests mentoring succeeded when lawyers attended to relationships and made the workplace and professional community welcoming to newcomers. Challenges to mentorship arose when lawyers neglected relationships, or exhibited exclusionary and exploitative workplace-community norms.

#### IV. LAWYER MENTORING TODAY

The Canadian legal profession today attends more explicitly to the project of mentorship than did lawyers in the nineteenth to mid-twentieth century, if the spate of new mentoring initiatives is any guide. The new mentoring initiatives coexist, however, with continuing concern among some lawyers that new members of the profession are not being effectively mentored. This part of the article suggests why concerns about mentorship might remain. Specifically, and despite program creation, the profession continues to grapple with the relational and workplace-community facets of mentorship, suggesting a historical continuity to lawyer mentoring challenges.

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120 (1922- ) Ontario lawyer, federal cabinet minister, lieutenant-governor of Ontario; see Lincoln M. Alexander (with Herb Shoveller), *"Go to School, You're a Little Black Boy": The Honourable Lincoln M. Alexander: A Memoir* (Toronto: Dundurn Press, 2006).

121 Sworden, *supra* note 119 at 479.

122 (1894-1970) First female lawyer to appear as counsel before the Supreme Court of Canada, and to be appointed a judge in Canada; see Marie Corbett & Doris Corbett, "Helen Kinnear (1894-1970)" in Rebecca Mae Salokar & Mary L. Volcansek, eds., *Women in Law: A Bio-Bibliographical Sourcebook* (Westport, CT: Greenwood Press, 1996).

123 See Corbett & Corbett, *ibid* at 130. See generally Mary Kinnear, "'That There Woman Lawyer': Women Lawyers in Manitoba 1915-1970" (1992) 5:1 CJWL 411 at 424.

124 (1912-1984) Former Chief Justice of Canada; see Girard, *supra* note 107.

125 Kyer & Bickenbach, *supra* note 82 at 165; Girard, *ibid* at 66, 106-7.

126 Girard, *ibid* at 106, 108 (for some time after his return to Harvard, Laskin made a living writing headnotes).

### A. Current Mentoring Initiatives: Mixed Sentiment About Lawyer Mentoring

The Canadian legal profession continues to rely on the formal principal-student relationship in articling as a main vehicle for lawyer mentorship.<sup>127</sup> Some law societies across Canada describe the articling principal as a “mentor,”<sup>128</sup> or as a lawyer with “mentoring responsibilities.”<sup>129</sup> Recently, Canadian law firms, law societies and law associations have also created numerous mentoring programs to assist new lawyers transition to practice after being called to the Bar. These programs recognize the need for mentoring beyond the articling year. The impetus for creating formal mentoring programs has also come partly from a sense that lawyers from equity-seeking groups were being left out of the informal mentoring networks of decades past. A brief overview of the new formal programs is provided, since challenges to mentorship today must be located within an understanding of the significant mentoring efforts currently underway.

Of the provincial law societies, the Law Society of Upper Canada currently runs the most extensive mentoring initiatives to assist law students and lawyers as they transition into the profession. One program is aimed specifically at articling students,<sup>130</sup> while a second is directed at practicing lawyers.<sup>131</sup> Two further programs target new lawyers from equity-seeking groups,<sup>132</sup> including a recent program to match law students and lawyers with disabilities with mentors who may or may not have a disability.<sup>133</sup>

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127 But see Janice M Zima, “Is Articling Obsolete?” (1995) 19:9 Can Law 18; *Report of the Special Committee on Legal Education* (Toronto: Law Society of Upper Canada, 1972) (over the years, members of the legal community have voiced concern about the variable quality of articles, and made calls to abolish the system); Licensing and Accreditation Task Force, *Report to Convocation* (25 September 2008), online: Law Society of Upper Canada <[http://www.lsuc.on.ca/media/convsep08\\_licensing.pdf](http://www.lsuc.on.ca/media/convsep08_licensing.pdf)> (in Ontario, a task force considered eliminating articles in view of placement shortages, but concluded by reaffirming the value of legal education through apprenticeship. It recommended the Law Society of Upper Canada take steps to increase the number of articling positions available, and encourage members of the profession who have not traditionally hired articling students to do so).

128 See “Articling Agreement”, online: The Law Society of British Columbia <[www.lawsociety.bc.ca/licensing\\_membership/articling/requirements.html](http://www.lawsociety.bc.ca/licensing_membership/articling/requirements.html)>; “Faites-vous une loi de soutenir la relève: Devenez maître de stage”, online: Barreau du Québec <[www.barreau.qc.ca/publications/depliant-maitre-stage.pdf](http://www.barreau.qc.ca/publications/depliant-maitre-stage.pdf)>; Beverly Cramp, “Mentoring in articling”, *The Lawyers Weekly* (11 November 2005) 6.

129 “Principals’ Professional Obligations and Commitments”, online: The Law Society of Upper Canada <<http://rc.lsuc.on.ca/pdf/licensingprocesslawyer/articling/ar48memPrincipalObligations.pdf>> at 5; The Law Society of Upper Canada *Rules of Professional Conduct* (Toronto: The Law Society of Upper Canada, 2010) at Rule 5.02(2) [LSUC, *Rules*] (codifying the principal’s duties to the student).

130 “Mentoring Program Registration Form for Mentees”, online: The Law Society of Upper Canada <[http://rc.lsuc.on.ca/pdf/mentorship/mentee\\_registration\\_form.pdf](http://rc.lsuc.on.ca/pdf/mentorship/mentee_registration_form.pdf)> (the Articling and Placement Mentorship Program matches students in the licensing process with a member of the profession who can provide advice and encouragement in the search for an articling position).

131 *Ibid* at 2 (the Practice Mentoring Program “connects lawyers with experienced practitioners to help deal with complex substantive legal issues or specific procedural issues”).

132 *Ibid* (the Equity and Diversity Mentoring Program aims to assist lawyers from equity-seeking groups advance in the profession); see *Equity and Diversity Mentoring Brochure* (Toronto: Law Society of Upper Canada).

133 Launched in 2008, the Disability Mentorship Program acts on the Disability Working Group’s recommendation for mentoring initiatives to improve differently-abled lawyers’ access to the profession. See Disability Working Group, *Students and Lawyers with Disabilities: Increasing Access to the Legal Profession* (Toronto: Law Society of Upper Canada, 2005) at 50-52 [*Increasing Access*].

Canadian law associations with voluntary membership pair senior and junior lawyers on the basis of geographic location,<sup>134</sup> membership in specific racial or ethnic groups,<sup>135</sup> or practice in specific areas of law.<sup>136</sup> Law associations for women have mentoring programs,<sup>137</sup> and a new Calgary-based mentoring initiative, Lilith Professional, aims to specifically address the challenges women face in the practice of law.<sup>138</sup> Further, several large Canadian law firms have, with help from mentoring consultants,<sup>139</sup> created formal mentoring programs matching new associates with more senior colleagues.<sup>140</sup> Some firms have also hired retired judges to mentor new lawyers.<sup>141</sup> Large Toronto firms are now developing formal mentoring programs specifically for women lawyers.<sup>142</sup>

Finally, a number of Continuing Legal Education (CLE) initiatives provide lawyers with skills training for practice, or for transition to more specialized practice areas, in what might be characterized as a complement to, or substitute for, mentoring. These include programs by the Canadian Bar Association and its provincial branches,<sup>143</sup> provincial law society CLE programs,<sup>144</sup> as well as Osgoode Professional Development's part-time LL.M. program.<sup>145</sup> Participating lawyers receive exposure to experienced role-models through these programs, but the emphasis is not on

134 See e.g. "Guide for Mentors", *supra* note 7 (on lawyer mentoring in the Montreal region).

135 See e.g. *Mentorship*, online: Black Law Students' Association of Canada <<http://www.blsacanada.ca>> (produced in conjunction with the Canadian Association of Black Lawyers); Canadian Muslim Lawyers Association, online: <<http://www.muslimlaw.ca>>; Canadian Italian Advocates Association, online: <<http://www.ciaocanada.com>>.

136 See e.g. Advocates' Society, online: <<http://www.advocates.ca/events/calendar.html>>; Canadian Corporate Counsel Association, online: <[http://www.cancorpccounsel.org/EN/Membership/Membership/Mentoring\\_Pilot\\_Program.aspx](http://www.cancorpccounsel.org/EN/Membership/Membership/Mentoring_Pilot_Program.aspx)>; "Mentoring at LAO", online: Legal Aid Ontario <[www.legalaid.on.ca/en/info/Mentoring.asp](http://www.legalaid.on.ca/en/info/Mentoring.asp)> (Legal Aid Ontario has launched a one-on-one mentoring program, as well as an online program).

137 See e.g. "Mentoring", online: Women's Law Association of Ontario <<http://www.wlao.on.ca>>; "CBABC Women Lawyers Forum", online: Canadian Bar Association British Columbia Branch <[http://www.cba.org/BC/Sections\\_Groups/wlaw/](http://www.cba.org/BC/Sections_Groups/wlaw/)>.

138 "Lilith Professional: A National Mentoring Program for Women Lawyers", online: Lilith Pro <<http://www.lilithlaw.com>>; Valerie Berenyi, "Scales tipped against women in law: mentoring program seeks to stem tide of female lawyers leaving the profession", *The Calgary Herald* (1 February 2009) B1.

139 See Erika Abner, "Professional Development for Lawyers", online: <<http://www.erikaabner.com>> (Erika Abner acts as a consultant for mentoring programs in large Toronto law firms); Abbott, *supra* note 9 (Ida Abbott, a former American litigator, is a leading North American consultant on formal mentoring programs). See generally Pablo Fuchs, "Associates want more responsibility, better mentorship, survey finds", *The Lawyers Weekly* 24: 24 (29 October 2004) 23.

140 See *The 2009 Expert Law Student and Associate Recruitment Guide* (Toronto: Thomson Canada, 2009) (provides extensive list of law firms with formal mentoring programs).

141 Gail J Cohen, "Mentoring Grows Up" (2006) 30:2 Can Law 29; See e.g. "Louise Mailhot", online: Fasken Martineau DuMoulin LLP <<http://www.fasken.com>>.

142 See e.g. "Women's Forum", online: McCarthy Tetrault <<http://www.mccarthy.ca>>; "Women at Blakes", online: Blakes <[www.blakes.com](http://www.blakes.com)>.

143 See e.g. "Professional Development", online: The Canadian Bar Association <<http://www.cba.org>>; "Professional Development", online: Ontario Bar Association <<http://www.oba.org>>.

144 See e.g. "Continuing Professional Development", online: The Law Society of Upper Canada <<http://rc.lsuc.on.ca>>; "Activités de formation continue", online: Barreau du Québec <<http://www.barreau.qc.ca/formation/>>.

145 "Professional Development", online: Osgoode <[www.osgoodepd.ca](http://www.osgoodepd.ca)> (established by Osgoode Hall Law School of York University, Osgoode Professional Development offers continuing legal education and part-time LL.M. programs in a variety of specialized fields of practice). I am grateful for Marilyn Pilkington's help with the above points.

mentoring relationships. Still, a motivated lawyer has the opportunity to form relationships with other participating members or leaders in the programs.

The decision to create formal mentoring programs conveys that the profession actively recognizes new lawyers' need for guidance, during articles and beyond. The bulk of legal education now takes place in the classroom; articles may last as little as ten months. A new lawyer cannot possibly gain enough practical experience in ten months to then practice, after being called to the Bar, without further guidance. Formal programs aimed at lawyers from equity-seeking groups also suggest the profession wants to reflect the diversity of Canada's population by explicitly committing to the development of lawyers who were historically excluded from mentorship. Further, formal programs emphasize the benefits of mentoring to protégés, mentors and the profession.

Anecdotally, some lawyers express significant satisfaction with the formal mentoring initiatives described above. For example, Margherita Braccio, a visually impaired lawyer, credits (now the Honourable) Thea Herman for valuable mentoring through the Law Society of Upper Canada's Equity and Diversity Mentoring Program.<sup>146</sup> A Lilith Professional participant describes "a renewed sense of energy" after acting as a mentor in the Calgary-based initiative.<sup>147</sup> Many new lawyers, articling students and summer students also voice satisfaction with the in-firm mentoring they receive.<sup>148</sup>

Despite the emergence of the mentoring initiatives described above, however, some lawyers express concern that the profession is not effectively mentoring new lawyers. Lawyers express their concern at conferences,<sup>149</sup> in academic work<sup>150</sup> and in survey data.<sup>151</sup> The Law Society of British Columbia maintains that mentoring relationships "have dwindled over recent years."<sup>152</sup> In 2007, the Honourable Sally

146 Disability Working Group, "Working group maps out strategy for lawyers with disabilities" (2006) 10:1 Ont Law Gaz 28.

147 "What our participants are saying about the program", online: Lilith Pro <<http://www.lilithlaw.com/feedback.php>>.

148 Kay, Hagan & Parker, *supra* note 5 at 92 (lawyers have recalled meaningful relationships with articling principals who "remembered what it was like to article" and were proud of their students); Fuchs, *supra* note 139. See e.g. "Cassels Brock Students" online: Cassels Brock <<http://students.casselsbrock.com>> (the student website for the Toronto firm Cassels Brock LLP contains an extensive list of positive mentoring anecdotes, and a mentor of the year award).

149 "The View from the Profession", *supra* note 48; Black History Month Forum, "Mentorship and Legal Profession Go Hand in Hand" (Black History Month Conference delivered at Osgoode Hall, 6 February 2008), online: Law Society of Upper Canada <<http://www.lsuc.on.ca/latest-news/b/archives/index.cfm?c=1029&i=13447>>.

150 See e.g. Gina Papageorgiou, *The Implications of Large Law Firm Changes for Women Lawyers* (LL.M. thesis, Osgoode Hall Law School, 2006), [unpublished] at iii, 80, 110. I am grateful to Marilyn Pilkington for directing me to this source.

151 Fuchs, *supra* note 139 at 23 (in a 2004 survey of associates at Canadian and American law firms, a majority of the associates who responded complained that firms placed "too much emphasis on billable hours" to the detriment of "professional growth"); FM Kay, C Masuch & P Curry, *Diversity and Change: The Contemporary Legal Profession in Ontario: A Report to the Law Society of Upper Canada* (Toronto: Law Society of Upper Canada, 2004) at 73-74, 89 (in a 2004 survey of 1,500 Ontario lawyers, survey participants wrote comments such as "the only way to learn was to make a mistake and have a senior lawyer tear a strip off you," and "too many [lawyers] also neglect their responsibility for mentoring").

152 "New Ways to Get Your CPD Credits", online: Law Society of British Columbia <[http://www.lawsociety.bc.ca/publications\\_forms/bulletin/2009/09-07-07\\_cpd.html](http://www.lawsociety.bc.ca/publications_forms/bulletin/2009/09-07-07_cpd.html)>.

Marin of the Ontario Court of Justice observed that Crown counsel appearing in her Toronto courtroom are routinely “green and under-mentored.”<sup>153</sup> In the discussion that follows, I adopt Justice Marin’s term “under-mentoring” to describe both the lack of effective mentoring and inconsistent or insufficient mentoring.

Historically, Canadian lawyers concerned about insufficient mentoring pointed out its serious consequences, not only for new lawyers but for the profession and the public.<sup>154</sup> Canadian lawyers and judges strike similar themes today. Lawyers note that under-mentored counsel may contribute to rising incivility in the profession,<sup>155</sup> and may feel less loyal to employers, generating high turnover costs.<sup>156</sup> Under-mentored lawyers from equity-seeking groups may abandon the profession, undermining diversity.<sup>157</sup> Moreover, untutored new lawyers may create delays in the system and represent clients ineffectively.<sup>158</sup> The Honourable Colin Campbell of the Ontario Superior Court of Justice observed that a lack of effective mentoring contributed to some counsel in his Toronto courtroom having “no idea” what they were doing.<sup>159</sup>

Emerging scholarly analysis has also identified concerns about lack of effective or sufficient lawyer mentoring. Abner’s work, with an admittedly small cohort of Toronto lawyers, stressed the reality of “no mentoring or dysfunctional mentoring.”<sup>160</sup> Kay, Hagan and Parker educe the theme of “neglect, even exploitation” during articling today.<sup>161</sup> Upon analyzing survey data of 1,500 Ontario lawyers in 2004, Kay identified “mentorship of junior lawyers” as a key challenge facing the profession.<sup>162</sup>

## B. Understanding Concerns About Lawyer Mentoring Today: Insights From History

Why might concerns about lawyer mentoring continue despite increased mentoring program creation? One possibility is that formal program creation above and beyond articling is an early response to concern, and more time may be needed before the programs have their full effect. I posit, however, that formal programs, alone, may be limited in their capacity to foster mentoring success. Historical analysis of lawyer mentoring provides insight into why this might be so. My intent here is not to simply

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153 The Honourable Sally Marin, “Address” (Osgoode Professional Conference Address, delivered at Osgoode Hall, York University, 24 November 2007), [unpublished].

154 See *supra* notes 98-100 and accompanying text.

155 Stockwood, “Three Mentors”, *supra* note 42 at para 1.

156 See Fuchs, *supra* note 139; Berenyi, *supra* note 138.

157 See the Right Honourable Beverley McLachlin, “The Civilization of Difference” (LaFontaine-Baldwin Symposium 2003 Lecture, delivered at the Dalhousie Arts Centre, Halifax, 7 March 2003), online: Supreme Court of Canada <<http://www.scc-csc.gc.ca/court-cour/ju/spe-dis/bm03-03-07-eng.asp>>, [unpublished]; Papageorgiou, *supra* note 150.

158 The Honourable Colin Campbell, “Reflections” (1999) 18:1 *Advocates’ Soc J* 3; Wendy Matheson, “Civility: Ten litigators to watch out for” (2006) 25:1 *Advocates’ Soc J* 17 at para 11.

159 Campbell, *ibid*.

160 Abner, “Situating Learning”, *supra* note 4 at 129.

161 Kay, Hagan & Parker, *supra* note 5 at 92.

162 Kay, Masuch & Curry, *supra* note 151 at 119.

extract lessons from history without regard to context or change.<sup>163</sup> Practicing law today is not the same as practicing law in nineteenth century Upper Canada. Still, insights from the history of lawyer mentoring are timely and instructive, bearing context and change in mind. Since the essentially human nature of mentoring threads across centuries, the history of lawyer mentoring remains pertinent.

My historical analysis suggests mentoring succeeded when lawyers created relational rapport and welcoming workplaces for newcomers. Concern about mentoring today may be understood when the historical continuity of mentoring challenges is also acknowledged. Crucially, and despite program creation, lawyers continue, as they did historically, to grapple with both the relational and workplace-community facets of mentorship. Thus, quality mentoring may not be easily amenable to simple institutional delivery through formal programs. Efforts from the profession on more fronts may be needed, as I suggest in the conclusion to this article.

### 1. *The Relational Facet of Mentorship: Past and Present*

My historical analysis of lawyer mentoring suggests that the endeavour succeeded when lawyers established personal ties. For example, William Hume Blake devoted time and effort to impart legal knowledge to his sons, Eddie Goodman made new lawyers aware of his loyalty to them, and Gregory Goulin's two mentors took the young Goulin "under their wings."<sup>164</sup> Ties, however, are not easy to formalize. People build relationships by choosing to attend to them,<sup>165</sup> and even the most well-intentioned formal mentoring program cannot impose rapport on its participants. A key challenge to formal mentoring program success today, then, is failure on the part of participants to establish meaningful connections.<sup>166</sup> This is not a new challenge for the profession: historically, while some lawyers instinctively fostered bonds with the new generation, others neglected mentoring and actively avoided connection with equity-seeking lawyers.

Today, the lawyers and consultants who create formal mentoring programs are sometimes "not entirely comfortable with the idea of mentoring as an intimate activity," favouring something "more objective, less suffused with particularity."<sup>167</sup> To the extent that lawyers' and consultants' concerns are rooted in respect for propriety and discretion, they are well-founded. Mentor and protégé are both entitled to a zone of privacy in the workplace and in the professional community. Yet, the successful historical mentoring relationships analyzed above stand out precisely because they were "suffused with particularity." We can imagine George McKenzie making time to

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163 See Fischer, *supra* note 46 at 157 (discusses the analytical dangers associated with merely "extract[ing] ... 'lessons'" from history and applying them "as policies to present problems"); Pue, "In Pursuit of Better Myth", *supra* note 41 at 731, 755.

164 See *supra* notes 65-68, 84-86 and accompanying text; Stockwood, "Three Mentors", *supra* note 42.

165 See e.g. Keith Ferrazzi (with Tahl Raz), *Never Eat Alone and Other Secrets to Success: One Relationship at a Time* (New York: Currency Doubleday, 2005).

166 See Reichman & Sterling, *supra* note 43 at 956-57 (Colorado lawyers participating in the study noted that the "personal component or bond necessary for an effective mentoring relationship" was often missing in formal programs); Kram, *supra* note 18 at 185.

167 Piety, *supra* note 22 at 587.

send the young John A. Macdonald instructions by horseback courier, or "Bill" Gale teaching John Arnup the art of advocacy at Mason, Foulds. A relational bond is by necessity particular; and without some bond of trust, respect and loyalty, mentorship will be hard pressed to succeed, program or no program.<sup>168</sup>

Finally, despite formal program creation, the mentoring bond continues to be strained by time and business pressures: broad societal and economic forces affect the quality of interpersonal relationships. Some commentators, Canadian and American alike, argue that it is recent economic change which has turned law practice into a fast-paced business, consequently hurting mentorship.<sup>169</sup> This claim requires refinement. The history of Canadian lawyer mentoring illustrates that neither commercialism nor time pressure are new features of lawyering that manifested with globalization.<sup>170</sup> As early as 1849, law students were sensitive to time and business pressures impeding mentoring relationships. Similarly, in 1910, Charles Elliott painted his evocative picture of the busy "modern" lawyer, who had no time to mentor because he was "absorbed" by his own files and by the faster pace of work the typewriter had brought.<sup>171</sup> Time and business pressures have challenged lawyers to create meaningful mentoring relationships for more than a century. Despite this historical continuity, it must be conceded that time pressures have reached dizzying new levels at the start of the twenty-first century. Formal mentoring programs risk becoming little more than band-aid solutions in the context of a pervasive, unsupportable time crunch within the profession and society at large.<sup>172</sup> Relationships, including but not limited to mentorship, suffer when no one has time to attend to them.

## 2. *The Workplace-Community Facet of Mentorship: Past and Present*

In the past, lawyers sometimes fostered work cultures where mentoring fell aside in the pursuit of profit, or where the workplace hierarchy was negotiated without sensitivity. Moreover, lawyers from equity-seeking groups struggled to obtain mentorship. These challenges to the success of mentorship remain pertinent today, despite formal program creation. The analysis below illustrates the historical continuity of challenges to lawyer mentoring posed by a bottom-line emphasis, workplace hierarchy and mentoring across difference.

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168 James J Sandman, "Why Formal Mentoring Programs Often Fail – And How to Help Them Succeed" *The Washington Lawyer* (October 2006), online: The District of Columbia Bar <[http://www.dcb.org/for\\_lawyers/resources/publications/washington\\_lawyer/october\\_2006/president.cfm](http://www.dcb.org/for_lawyers/resources/publications/washington_lawyer/october_2006/president.cfm)> (if a protégé does not feel safe raising concerns with his or her mentor, the benefits of a formal program may be lost).

169 Scott, *supra* note 51 at 44; Linowitz, *supra* note 50 at 106-107.

170 For a similar argument in the American context, see Kathleen P Browe, "A Critique of the Civility Movement: Why Rambo Will Not Go Away" (1994) 77:4 Marq L Rev 751 at 774.

171 See *supra* notes 93-95 and accompanying text; WJ McWhinney, "Address to the Ontario Bar Association" (Address delivered at the Annual Bar Association Meeting, Toronto, 1916) (1916) 52 Can LJ 1 at 6 (McWhinney stated: "This is a business age, and business exigencies prevail, and in the main our Judges and lawyers are business men").

172 See Scott, *supra* note 51; Jean McKenzie Leiper, "Women Lawyers and their Working Arrangements: Time Crunch, Stress, and Career Paths" (1998) 13:2 CJLS 117 at 128-29, 131-32. See generally Carl Honoré, *In Praise of Slow: How a Worldwide Movement is Challenging the Cult of Speed* (Toronto: Vintage Canada, 2004).



First, to the extent that legal culture promotes short-term profits above most other goals, the quality of mentorship may suffer regardless of the number of programs implemented. The practice of law has always carried a business aspect, and business is not an inherently mentoring-averse enterprise. Still, any occupation—profession or trade—pursued merely for short-term profit can impoverish the mentoring that takes place within it.

Previously, mentoring was likely to suffer when senior lawyers exploited students in the workforce, paying them little or nothing. Today, articling students and new lawyers are hardly the “cheap labour” they were in the nineteenth and early twentieth century. Law firms’ decisions to raise billable hour targets over the past 30 years mean that new, as well as experienced, lawyers at elite firms today make a great deal more money. Yet, experienced lawyers may be too overworked under the strain of unsustainable billable hours to mentor the new generation, even in the presence of formal programs and commitments.<sup>173</sup> A Toronto lawyer’s comments about her firm-assigned mentor on Bay Street capture the concern:

She had her family to worry about, her own work and keeping in with the other partners. I came low on her list, and that’s how it had to be. She was just keeping her head above water herself.<sup>174</sup>

In such a professional culture, new lawyers may become sceptical of the older generation’s commitment to mentorship, even in the presence of formal programs.<sup>175</sup>

Historically, when the legal profession struggled to negotiate the hierarchy of the workplace with sensitivity, mentoring also suffered. The creation of formal mentoring programs has not erased this challenge. True, today’s articling student and junior lawyer is hardly the early twentieth century step-and-fetch-it, “honoured” simply to carry “his chief’s red brief bag.”<sup>176</sup> Law societies have now drafted regulations, for example, to help ensure that the articling experience is meaningful and menial tasks are kept to a minimum.<sup>177</sup> In today’s law firms, however, a culture of delegation over integration may still strain the workplace hierarchy and impede formal program

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173 David Gambrell, “Mentoring suffers under drive for dollars” (2001) 12:34 *Law Times* 1; Karen MacKay, “Lunch with your mentor: An agenda” 24:46 *The Lawyers Weekly* (15 April 2005); Fitzgerald, *supra* note 47 at 216. See also DeLong, Gabarro & Lees, *supra* note 32 at 116, 121.

174 Scott, *supra* note 51 at 49; see also Piety, *supra* note 22 at 587, n 12.

175 Jeremy Blachman’s satirical novel about the legal profession speaks to the lack of credibility of some lawyer mentoring initiatives in the current practice climate. “Mentor,” scoffs Anonymous Lawyer, the novel’s high-flying anti-hero, depicted working at a big firm in Los Angeles. “I hate that word ... [C]all me a ‘mentor’ and suddenly I’m burdened with having to think about you”: Jeremy Blachman, *Anonymous Lawyer* (New York: Picador, 2006) at 130.

176 Compare Elliott, *supra* note 93 at 174, 176 and accompanying text; Vanek, *supra* note 112 and accompanying text.

177 LSUC, *Rules*, *supra* note 129 at Rule 5.02(2) (“Duties of Principal: A lawyer acting as a principal to a student shall provide the student with meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession”).

success. Senior lawyers may limit contact with junior colleagues.<sup>178</sup> Articling students and junior lawyers may spend the first few years of practice churning out research memoranda<sup>179</sup> with little direction or feedback on their work,<sup>180</sup> an experience that can make them feel, in David Stockwood's words, like "battery hens."<sup>181</sup> Or, because articling students and new lawyers are expected to be instantly profitable—in part to justify inflated starting salaries—senior lawyers may pitch new lawyers "in over [their] head[s]: drafting contracts; fighting motions; interviewing witnesses; and doing other complicated tasks on [their] own."<sup>182</sup> Thus, the historical theme of the bewildered, new Upper Canadian lawyer "grop[ing] in the dark" and "pawing" over papers remains pertinent today.<sup>183</sup> Moreover, as was the case in the past, without effective supervision a new lawyer may not provide competent client representation that complies with standards of professional conduct.

Historically, barriers to entry prevented many lawyers from equity-seeking groups from forming any mentoring relationships at all. Today, some of the daunting barriers to entry that earlier generations had to surmount have lessened. Women, for example, have made great strides in the profession. Still, tangible barriers to entry remain today for lawyers from historically marginalized groups. Despite program creation, these barriers hinder, as they did historically, both entry into the profession and new lawyers' capacity to form mentoring relationships.

The articling experience continues, to a degree, to be a "screening device"<sup>184</sup> that impedes access for lawyers from equity-seeking groups, while also hurting mentorship. Lawyers with disabilities, for example, are seldom hired back after articles.<sup>185</sup> A lawyer with a disability may thus try to cultivate relationships with mentors during articling, while dreading that the bonds may be severed after call to the Bar. Moreover, racialized law students in Canada have voiced systematic concern that they had fewer opportunities to secure articling positions and first jobs, and did not benefit from the same articling experience as their white colleagues.<sup>186</sup> As recently as 2000, approximately 40 percent of Aboriginal lawyers surveyed in a British Columbia study reported barriers during articling such as cultural insensitivity or

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178 See Martin EP Seligman, Paul R Verkuil & Terry H King, "Why Lawyers Are Unhappy" (2001) 23:1 *Cardozo L. Rev.* 33 at 42; Gerry Riskin, "Associate Dissatisfaction: The Chance that Clifford Took", online: (2003) *Edge International* 1 at 8 <[http://www.edge.ai/files/teambuild.chance\\_that\\_clifford\\_took.pdf](http://www.edge.ai/files/teambuild.chance_that_clifford_took.pdf)>.

179 See Fitzgerald, *supra* note 47 at 221, 226, n 14; Campbell, *supra* note 158; Seligman, *supra* note 178 at 42.

180 Law, *supra* note 61 at 471-72.

181 Scott, *supra* note 51 at 49.

182 Allan C Hutchinson, "Articling", *CBA National Magazine* (August 1994) 33, cited in Fitzgerald, *supra* note 47 at 218.

183 *Supra* note 99 at 238; *supra* note 100 at 203.

184 Kyer & Bickenbach, *supra* note 82 at 75 and accompanying text.

185 Disability Research Working Group, *Lawyers with Disabilities: Overcoming Barriers to Equality* (Vancouver: Law Society of British Columbia, 2004) at 5 [*Overcoming Barriers*].

186 Joanne St Lewis, Benjamin Trevino & Jewel Amoah, "Racial Equality in the Canadian Legal Profession" (presented to the Council of the Canadian Bar Association by the Working Group on Racial Equality in the Legal Profession, February 1999), Ottawa: Canadian Bar Association, 1999 at 12, 17-19, 77.

being funnelled into areas of law that were not of interest to them.<sup>187</sup> Impoverishing the articling experience of equity-seeking lawyers in this manner is at cross-purposes with attending to the relational and workplace facets of mentoring.

Lawyers from equity-seeking groups—including women lawyers,<sup>188</sup> racialized lawyers,<sup>189</sup> and lawyers with disabilities<sup>190</sup>—also report greater challenges in securing effective mentoring. While mentoring programs aimed at equity-seeking lawyers suggest the Canadian legal profession is seeking to develop a culture of mentoring across difference, problematic professional norms may still undermine program success. To understand the challenges at play, the young Bora Laskin's mentoring relationship with Professors Wright and Kennedy during the Depression years remains pertinent. By mentoring Laskin, the two professors tried to "compensate for [the] structural barriers"<sup>191</sup> of anti-Semitism. But two professors, devoted though they were to their gifted protégé, could hardly defeat a legal community's overt prejudices.

Canadian legal culture today eschews overt prejudice, but professional norms continue to reflect the dominant male, white, able-bodied paradigm, in turn challenging mentorship for lawyers from equity-seeking groups. Mentoring programs aimed at women lawyers may genuinely want to extend support and provide women lawyers "with the inside information usually obtained in the 'old boys' networks."<sup>192</sup> Yet, so long as lawyering success is equated with long hours and an uninterrupted career arc, the biological realities of childbirth and the still gendered responsibilities of care-giving will hinder many women's career advancement.<sup>193</sup> Mentors and protégés may be relegated to conversations about how to negotiate maternity leave without setting

187 Gerry Ferguson & Kuan Foo, *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers* (Vancouver: Law Society of British Columbia, 2000) at 35. See also Charles C. Smith, "Who is Afraid of the Big Bad Social Constructionists? Or Shedding Light on the Unpardonable Whiteness of the Canadian Legal Profession" (2008) 45 *Alta L. Rev.* 55 (given the nexus between class and race, rising tuition for law school erects barriers to the legal profession for Aboriginal and other racialized Canadians even before articling).

188 See Kay, Masuch & Curry, *supra* note 151 at 62-63, 93-94 (a number of female study participants complained of lack of mentoring from senior lawyers, exclusion from social gatherings, and not being invited to work with particular senior partners); Law Society of Upper Canada, *Final Report – Retention of Women in Private Practice Working Group* (Toronto: Law Society of Upper Canada, 2008) at 45, 99; Papageorgiou, *supra* note 150 at 26, 80; McLachlin, *supra* note 157. But see Kay & Wallace, *supra* note 6 at 16 (in a survey of lawyers, female respondents reported having received mentoring at a higher rate than male respondents).

189 See Strategic Counsel, *Articling Consultation Report* (Toronto: Law Society of Upper Canada, 2007) at 18-19 (racialized Canadian law students expressed concern about lack of access to traditional power networks); Michael St. Patrick Baxter, "Black Bay Street Lawyers and Other Oxymora" (1998) 30 *Can. Bus. L.J.* 267 at 277-78 (on the tendency of established lawyers—still overwhelmingly white—to mentor associates who they identify with, not likely to be associates of colour).

190 See Strategic Counsel, *Access Research Consultation: Report to the Law Society of Upper Canada in Increasing Access*, *supra* note 133 at 14-15 (study participants with disabilities expressed concerns about not being given the opportunity to interact and work with senior "heavy hitting" lawyers during articling; and about lack of encouragement and support); Merrill Cooper, Joan Brockman & Irene Hoffart, *Final Report on Equity and Diversity in Alberta's Legal Profession* (Calgary: Law Society of Alberta, 2004) at 83 (survey respondents with disabilities were "significantly less satisfied" with the mentoring available to them than respondents without disabilities).

191 Ragins, *supra* note 1 at 503.

192 *Ibid.*

193 See the Honourable Bertha Wilson, *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa: Canadian Bar Association, 1993); Reichman & Sterling, *supra* note 43 at 948.

off tempers;<sup>194</sup> ambitious women lawyers may be too pressured proving themselves<sup>195</sup> or “battl[ing] out” acceptable family leave policies in their firms<sup>196</sup> to mentor at all.

Lawyers with disabilities, meanwhile, face challenges securing effective mentoring in a profession that has yet to wrestle with the able-bodied norms it imposes. True, mentoring programs for lawyers with disabilities represent a budding effort to address concerns, but palpable unease remains that law firms and government departments do not fully embrace part-time work and other necessary accommodations for lawyers with disabilities.<sup>197</sup> In such an environment, mentoring suffers. For example, in the absence of part-time work acceptance, the differently-abled protégé and his or her mentor may feel uncomfortable discussing the manageability of the protégé’s workload, with potentially dangerous consequences for the protégé.

## V. CONCLUSION

Scholarly research on lawyer mentoring in Canada is still in its infancy. While this article has offered a discrete contribution to understanding the historical continuity of lawyer mentoring challenges, much more work could fruitfully be undertaken in this area. Systematic research is needed on the history of lawyer mentoring in Canada. Moreover, mentoring across difference raises important questions of social justice and equity in the profession meriting more sustained attention than my reflections here provide. Work is also needed to help the profession overcome challenges to lawyer mentoring. Although this article has emphasized the continuity of these challenges, it would be premature to abandon the goal of mentoring excellence.

Efforts on a number of fronts, including but not limited to formal initiatives, may be needed to ensure the profession meets its responsibilities to new members in the future. At this juncture, efforts may need to focus less on the creation of programs, and more on the terrain in which the programs exist. The private–public quality of mentorship suggests mentoring is not easily amenable to formalization or to the kind of professional governance that guides, say, the lawyer–client relationship. I offer two brief parting thoughts on what the profession may wish to consider, beyond institutional delivery, to work towards excellence in lawyer mentoring.

First, more democratic and sustainable professional norms should better support quality mentorship, even in the absence of additional formal programs. Confronting the still dominant male, able-bodied paradigm of lawyering that demands an unsociable work schedule may, for example, lay the foundation for a more

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194 Kay, Masuch & Curry, *supra* note 151 at 80 (a survey of Ontario lawyers captures comments from a forceful, restive minority of (male) lawyers dissatisfied with the business implications of maternity leave policies).

195 See Ragins, *supra* note 1 at 498; Reichman & Sterling, *supra* note 43 at 959.

196 See comments by survey participant in Kay, Masuch & Curry, *supra* note 151 at 94.

197 *Overcoming Barriers*, *supra* note 185 at 5. See also Margaret Thornton & Joanne Bagust, “The Gender Trap: Flexible Work in Corporate Legal Practice” (2007) 45:4 *Osgoode Hall LJ* 773 (on the stigmatization of part-time lawyers); Kay, Masuch & Curry, *supra* note 151 at 25, 76–78, 99 (on the profession’s reluctance to adopt alternative working arrangements).

mentoring-friendly professional culture. A more sustainable workplace culture is also more likely to acknowledge and reward the accomplishments of committed mentors. Indeed, the business-oriented lawyer may be pleased to find that a mentoring-friendly office makes new and experienced counsel happier, more productive and invigorated in their practice.

Second, individual lawyers may also improve the terrain for lawyer mentorship by cultivating a more vigorous ethical stance. Personal and professional ethics may anchor the mentoring bond, may help ensure that lawyers negotiate the workplace hierarchy with sensitivity, and may encourage mentoring across difference as a matter of social justice. Since mentoring is a relationship between two people, every lawyer concerned about mentoring today is empowered to initiate change by cultivating personal ethics that support quality mentoring. A community of lawyers committed to ethics that support mentorship should not be underestimated in its capacity to enhance lawyer mentoring, in spite of the profession's variegated mentoring history. By honouring the responsibility and privilege to "help the generations who follow to build on what the earlier generations have done,"<sup>198</sup> Canadian lawyers carry the potential to improve the quality of lawyer mentoring in the years ahead.

